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# The Opinion Volume 30 Number 4 – September 27, 1989

The Opinion

THE OPINION

Volume 30, No. 4 STATE UNIVERSITY OF NEW YORK AT BUFFALO SCHOOL OF LAW September 27, 1989

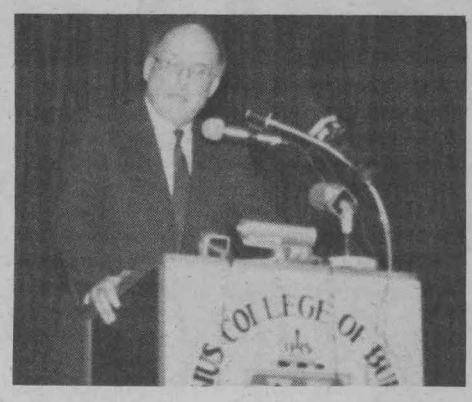
# Chief Justice Rehnquist Speaks At Canisius College

On Thursday, September 14, Chief Justice William H. Rehnquist appeared at Canisius College and delivered a lecture entitled "A Tale of Two Bicentennials: America and France, 1789-1989." Appearing tired and haggard, Chief Justice Rehnquist read from a prepared text. The subject of his lecture was a comparison of the judiciaries which followed the revolutions in America and France.

**by Michael Gurwitz**
***Features Editor***

Chief Justice Rehnquist began with a look at the French revolution. In 1789 France established the "Declaration of the Rights of Man." This declaration, much like our Bill of Rights, established basic freedoms and rights, including freedom of speech and association, a presumption of innocence until proven guilty, and just punishment.

Yet in the period of 1793 to 1795, the French embarked on a "Reign of Terror" in which thousands were executed. The French established "Revolutionary Tribunals" which were a mockery of the judicial process. Political prisoners were brought



*Chief Justice Rehnquist*

before these courts where the only possible outcomes were death or acquittal. There was no chance to cross-examine witnesses, juries could announce their verdicts before all the evidence was heard, and the accused could not speak in their own defense. Eventually even this process proved too slow for the Revolutionary government, and so prisoners were tried en masse, often for unrelated crimes, but always with the intention that they lose their heads to the guillotine.

The Chief Justice then examined the American post-revolution. According to Rehnquist, the independent judiciary established by the United States of America was this country's "most significant contribution to the art of government."

While in France the courts were simply minions of the government, the courts in the United States were given an independence which allowed them to withstand the political pressures of the time.

Chief Justice Rehnquist cited the case of Aaron Burr. After a falling out with Thomas Jefferson, Burr headed West. In 1806, President Jefferson warned of a conspiracy to cause the States within the Ohio and Mississippi valleys to secede from the Union. Burr was named as the lead conspirator and was caught. Though President Jefferson declared that Burr was guilty beyond question, Chief Justice John Marshall found Burr innocent. A limited government, according to Chief Justice Rehnquist, made all the difference between the just outcomes of political trials in post-revolutionary America, and the bloodbath which followed the French revolution.

The lecture lasted about forty-five minutes, after which the Chief Justice entertained questions from the audience. One young woman asked advice on how to prepare for becoming Chief Justice of the Supreme Court. Rehnquist replied that there is no sure way except for going to law school, working as a lawyer, and then "Being there when the bus goes by."

Bruce Brown, news editor of *The Opinion,* asked about the political nature of the Court. Though it has been stated that the Court exists in a political vacuum (the major theme of the evening's lecture), Brown pointed out that in the Korematsu case of 1944, the Court apparently bowed to the political pressures of the day and ruled that it was legal to intern Japanese Americans in concentration camps. The Chief Justice responded by saying that the justices of the Court are appointed by a democratically elected President and approved by a democratically elected Congress. The Court, Rehnquist concluded, is neither consciously moved by political pressures, nor popular demonstrations.

# Sajos Discusses A Democratic Constitution for Hungary

Those law students fortunate enough to have heard one of Prof. Andres Sajos' talks on the democratization of the Hungarian Constitution and the deregulation of the Hungarian Economy on Friday Sept. 15, 1989, experienced a candid and good-humored discussion of the remarkable opportunities now open to the Hungarian people by a scholar and actual participant in politico-economic reform. The

**by Dennis Fordham**
***Staff Writer***

lecture was made possible by Prof. Meidinger, who invited Prof. Sajos of the University of Budapest to discuss his participation as a drafter of the up-coming Hungarian Constitution and as assistant chairman in charge of deregulating the economy. The audience to Prof Sajos' lectures benefitted from the knowledge of a man acquainted with both the practical urgency of the economic crisis that has forced the new developments, and the aspirations of the Hungarians for a democratic constitution.

Currently, the Hungarian Constitution is a de jure legal document held-over from the Stalinist 1949 imposition of a puppet Communist government. The constitution is basicly a replica of the Stalinist 1936 Constitution, and is not a working element in the judicial life since it is never relied upon in judicial cases. What has existed since 1949 in Hungary is a Communist Party dominated monolithic government. It is now forced by economic failures to recognize non-legal non-Communist parties who call for free elections to Parliament, and a deregulation of state controlled monopolized industry in a glasnost inspired democratization of the Constitution.

To accomplish democratization in Hungary, which has a history of only authoritarian control, requires, as Prof. Sajos put it, "imposing democracy upon the people with a German style Constitution and explicit statutory rights." Prof. Sajos sees the need for positive statutory laws such as the recently enacted "right to demonstrate laws" as drawing a clear line against police excesses and manipulation of the Constitution (contrary to the view held by many radicals who see positive laws as contra democratic legislation).

A step towards the impostition of democracy (and away from a monolithic government) is the separation of powers between the President and Parliament with the President have the power to nominate the Prime Minister (and Parliament the power to accept or reject) and the power to dissolve Parliament. However, Prof. Sajos fears the Communist government may have retained a trump card since the Communist Party will pick the President despite not having a majority in the Parliament.

Deregulation of the Hungarian Economy which currently is wholly state monopolistic is a process which Prof. Sajos realizes, "can only be assisted by getting rid of Party privileges, and not forced by a new constitution." Given, however, that the unsuccessful Communist Party is, according to Prof. Sajos, "giving up much responsibility for the economy," the start towards decentralization of responsibility to regional management will be a step forward. As far as individual initiative is concerned, Prof. Sajos foresees "even the second generation under a new Constitution will remain dependent upon the state provided welfare." Finally, if past attempts to give workers control are any reflection on success of such attempts, it is plain to see how easily a de jure system of worker participation was turned into a de facto means of Communist control by co-opting the worker representatives.

Overall, Prof. Sajos believes that the process to democratization and free-elections will be a long one, even with the benefit of historic examples of Western countries. As Prof. Sajos reminds us, "the Hungarian situation today is not the same as Lockean 18th Century England or Rousseaun 18th Century France, but is a phenomenon of post-war Eastern Europe that has never known any government but authoritarian regimes."

Prof. Sajos is not happy with the Constitution that is to be voted upon by the people but sees it as a necessary step towards getting on with the subsequent process of building up Hungary. Ironically Prof. Sajos said, "I will not protest the constitution, it contains nothing indecent, but I will as a free citizen vote against it."

# Student Lawsuit Reaches Procedural Climax

*Majchrzak v. Faculty of Law & Jurisprudence, et. al.* took some judicial twists and turns last week. Judge John T. Curtin responded to the Plaintiffs' motion for recusal by transferring the case from his dockedt to that of District Court Judge Richard J. Arcara. The motion to recuse was based on Judge Curtin's acceptance of the highest award given by the Faculty of Law and Jurisprudence, the Edwin F.

**by Bruce Brown**
***News Editor***

Jaeckle Award. Judge Curtin is one of UB Law's most distinguished alumni. While the Plaintiffs considered the transfer a victory, Allithea Lango, the defense attorney, emphasized that this was not a decision on the merits, stating, "This is the third case I've had transferred this week, it's not unusual." In another interesting development, the Plaintiffs, on Monday, September 18, temporarily had a default judgement entered in their favor, only to have it undone later that afternoon. This peculiar turn of events was triggered when the Defendants' answer, due Friday, September 15, failed to arrive as scheduled. Plaintiffs Majchrzak and Wienzek then alertly filed an entry of default. Lango told *The Opinion* that the Plaintiffs' failure to complete service of all the named faculty members made an answer at this time inappropriate and moved to have the time enlarged to October 22. The default judgement was subsequently "undone". The Plaintiffs are still waiting for 12 faculty acknowledgements of the suit. If they are not forthcoming, Messrs. Majchrzak and Wienzek will have to notify them via a processor at a cost of $25 per service. Explaining why they have not yet done this, Wienzek said, "We just don't have the money."

## 1989-1990 SBA Class Directors

| 1st YEAR | # of Votes | 2nd YEAR | # of Votes | 3rd YEAR | # of Votes |
|---|---|---|---|---|---|
| Pamela Howell | 88 | Mark Schlechter | 46 | Judy Buckley | 52 |
| Marc Hirschfield | 82 | Kevin S. Doyle | 40 | Betsy Bannigan | 50 |
| Jim Maisano | 78 | Mark Steiner | 40 | Bill Bee | 40 |
| Daryl Parker | 52 | Mark Phillips | 35 | Ivan Khoury | 36 |
| Shawn Jacque | 48 | Tara Burke | 31 | Aileen McNamara | 28 |
| Brian Carso | 44 | Jennifer Latham | 28 | Rob Brucato | 26 |

## HIGHLIGHTS

# Jessup Competition Successful; Team, Associate Members Named

**by Kimi Lynn King**

While most students were winding down their summer employment, travels and classes, competitors in the Jessup International Moot Court competition were just beginning to prepare for the 1989-90 U.B. Jessup Intramural. The "Jessup" is an annual moot court competition held here at U.B. to determine the four students who will advance to represent U.B. at the northeastern regional competition held in February 1990. In addition to invitations for team membership, the current Jessup Board extended offers for two associate memberships on the Jessup Board.

Structured similarly to the regional Philip C. Jessup International Law Moot Court, the Jessup Intramural at U.B. requires all competitors to analyze a problem in a selected area of international law. Participants are expected to write and submit an 8-10 page memorial (brief) on the problem. The Jessup Board selected the problem last spring, and all of the materials were compiled and distributed over the summer. In order to minimize the research, the Jessup Board provides all the information necessary for competing, so no outside research is necessary.

In addition to the written portion, all competitors are required to present an oral argument before the International Court of Justice. This year's international legal quandry found two fictitious nation-states — the Republic of Yokum and the Confederation of Shangri — locked in a feud regarding state responsibility for terrorist activities and the permissible use of force in combating terrorism (simple, light-hearted stuff).

Since most students do not have a background in international law, the competition is unusually difficult because international conflict resolution is governed by unique sources of law. All the competitors are to be given special commendation for spending their first two weeks of school preparing for the competition. All of their hard work and effort was evident on September 6 and 7, when outside panels of judges heard oral arguments. The judges, clerks, and Board agreed that this year's competition was fierce. All competitors are to be congratulated for having undertaken such a challenge.

Members of the U.B. Jessup Moot Court team and associate members of the U.B. Jessup Moot Court Board are selected based on an equal weighting of their scores on the written and oral components of the intramural competition. Now that the competition is over, the real work for the team is just beginning. All team members are required to take Introduction to International Law with Guyora Binder. Beginning in October, the team members will start research tutorials. When the problem is issued from the American Society of International Law Students Association, team members will begin researching and writing a memorial for the regional competition.

The Jessup competition offers students an excellent opportunity to enhance their writing skills and increase their oral advocacy capabilities. All first and second year students interested in competing in next year's competition should watch for information in late March regarding an orientation meeting. Because of the manner in which the competition is structured, students will need to have their address on file with the Board, so they can receive information over the summer.

The Jessup International Law Moot Court Board

*proudly presents*

**The 1989-90**

**U.B. Jessup International Law Moot Court Team**

Bill Bee • Denise Colsanti-Munson • Mary Beth Scarcello • Loretta Smith

*Congratulations to:*

Jon Eric Braun *(Associate Member)* • Lenny Cooper (Associate Member)

***Awards:***

Lenny Cooper, *Best Memorial*
Mary Beth Scarcello, *2nd Best Memorial*
Denise Colsanti-Munson, *3rd Best Memorial*
Bill Bee, *Excellent Memorial*
Loretta Smith, Excellent Memorial
Alice Elder / Moses Howder (tie)
*Excellent Memorial*

Loretta Smith, *Best Oralist*
Bill Bee, *2nd Best Oralist*
Eric Braun, *3rd Best Oralist*
Denise Colsanti-Munson, *Excellent Oralist*
Dennis Fordham, *Excellent Oralist*
Mary Beth Scarcello, *Excellent Oralist*

# Law Library Hosts Carnival of Paintings

**by Ted Baecher**
***Staff Writer***

The next time you are in the Law Library, and your weary eyes need a reprieve, take a look at the series of abstract expressionist paintings hanging on the third floor wall. Installed in August, this series of paintings, entitled "Carnival," is the work of artist Dorothy Shea (1924-1963).

The paintings are entitled "Carnival" because they depict various aspects of a French carnival, according to Robert Bertholf, Curator of U.B.'s Poetry and Rare Books Collection. The paintings, says Bertholf, are like a "suite of plays" or "series of stories" in which "various aspects of the Carnival" are represented. Two other paintings were originally part of the series but were sold a number of years ago.

A U.B. graduate who studied at the Pratt Institute and Albright Art School, Dorothy Shea had a distinguished art career. She lectured at Canisius College, the Albright Art School and at the Department of Art and School of Education here at U.B. Her numerous exhibitions have been held at such institutions as the Albright Art Gallery, Chautaugua Institute, Melody Fair and Philadelphia Museum. Her important permanent collections include "Bridge Series #32, Structure 1962" at the Albright-Knox, "The Last Supper" at the Amherst Community Church, and "Untitled Brown Study #1" in the Baldy Hall walkway.

Ellen Gibson, Director of the Law Library, said the library was selected as the best campus location in which to display Ms. Shea's work because of the high, white walls. Bertholf, who was primarily responsible for bringing the paintings to the law library, says a "natural match" exists between the environment (the high white walls) and the paintings. He further adds that the paintings are in a position which pose "no security problems."

Donated by Betty Cohen, a friend of Ms. Shea, "Carnival" is expected to remain indefinitely at the law school. Gibson is delighted to have the paintings at the library and says that reaction thus far has been very favorable. Second year student Carl Tierney agrees with Gibson and believes the paintings "add something to the place." So if you are in the mood for something other than legal research, take a moment to appreciate Dorothy Shea's "Carnival."

THE OPINION

STATE UNIVERSITY OF NEW YORK AT BUFFALO SCHOOL OF LAW

Volume 30, No. 4 September 27, 1989



## Editorial

# Student Groups Need Financial Freedom

Every year representatives of student organizations attend a lengthy budget hearing to fight for their share of the limited SBA budget. Many students fail to realize that the minimal budgets student organizations are awarded at these hearings are in essence out of their control throughout the school year. It seems logical that students willing to donate the time to run law school organizations should be able to easily obtain money from their budgets to buy things such as office supplies and materials for making posters. This is not the case. The entire SBA budget, including the budgets of law school organizations is closely guarded by Sub-Board I, and helping student organizations get access to their budgets does not appear to be one of their main objectives.

The "easiest" way for a student organization to get money for a project or event is for the students in the organization to put up their own money, collect receipts and turn them in with properly filled out forms to SBA. SBA then turns them in to Sub-Board I. It is often weeks or months before the students are reimbursed.

The alternative to this quick and easy method is to plan an event *at least* six weeks in advance. Receipts have to be collected in advance from vendors who are often unwilling to write out a receipt when no cash or merchandise has exchanged hands (can we blame them?). Vouchers and documentation of the intended purchase is then turned in to SBA and subsequently to Sub-Board I. The result of all this paperwork and running around, hopefully, is a check given to the student organization. The check is made out to the vendor and students are then able to go to the vendor and make their purchase, hopefully before the end of their event. It is not the end, however. Students have to return the original receipt to Sub-Board I after the purchase. This is to prove that we unscrupulous law students didn't have a night on the town with a check for $20.00 made out to an office supply store.

Sub-Board I has little faith in law students. Often, their watchdog tactics have the effect of dictating how student organizations should spend their money. Is this not for the organizations to decide?

Unlike the typical undergraduate student getting his or her first exposure to balancing a checkbook, most law students have had years of experience handling money and balancing budgets. We are respectable individuals entering a respectable profession and most of us have no desire to skip town with the hundred dollar budget that was allocated to our group. We want pencils and typewriter ribbons, not company cars and executive suites.

Is it entirely unthinkable that student organizations should be in control of their own budgets? SBA and the other law school organizations are part of an unproductive edifice whose end result is constant bureaucratic delays. Due to the inordinate amount of red tape, bills are not paid on time and cash is not accessible.

SBA, along with all the law school organizations, needs to start working now on a way to put the students' money back in the hands of the students.



# Students Urged To Evaluate JAG Issue On Their Own

**To the Editor:**

I often find *The Opinion* to be interesting reading, particularly the editorial and Mailbox features. But every once in a while a facile attempt at misrepresenting the facts of a current issue "slips" in. I am referring to the letter "JAG Controversy Revisited" by Nathaniel Charny in the 13 September 1989 issue of this past week.

Charny's assertions are at best spurious and obfuscatious. At their worst, lies; insofar as not telling the whole truth is functionally the same as telling a lie.

Since Charny refused to name or enumerate the institutions he alleges discriminate in their hiring practices, I will; he is referring to the Judge Advocate General Corps of the U.S. military and the Federal Bureau of Investigation, the only two that fit his ill-informed and arbitrary definition of employment discrimination as applied to hiring institutions.

Charny makes it a point not to mention that the hiring policies of these two institutions are mandated by Federal law and regulation; proscriptions against homosexuality being compulsory in the military and in the case of the FBI concommitant on the sensitivity of the position being applied for (see 42 USC 2000-e-2 and 10 USC 505, 591, 1216, 1331 for starters).

The supremacy of these institutions to set their own standards for their personnel has been consistently upheld by the courts. The proscriptions that Charny is against, i.e. homosexuality handicapped status, and age are considered bona fide job requirements, not to serve as the tools of discrimination that he purports them to be.

Charny outright lies when he implies that sexual preference was added as a protected class to the CDO policy *solely* to comply with Gov. Cuomo's Executive Order 28 and SUNY Resolution 83-216. It is clearly stated in *The Opinion* of 10 February 1989 in an article by Jennifer Latham in paragraph three, "This ban is based on the addition of sexual preference to the school's anti-discrimination policy . . . [which] was the result of a student initiated policy organized by the National Lawyer's Guild." In the Mailbox feature of the same issue, this charge is re-affirmed in an article by Associate

*(continued on page 5)*

# *Student Alleges Opinion* Reporters Lack Objectivity

**To the Editor:**

Once again, *The Opinion* has written a cover story on a sensitive issue with its usual degree of objectivity. The story in the September 13th issue entitled, "Students Bring Suit Challenging Faculty Statement" was so completely biased against the students and the suit that one wonders why, on page six, they bothered to write an editorial on the subject. It was redundant. The front page article was nothing other than an editorial itself.

Messrs. Brown and Baecher go to great lengths to quote no fewer than five people in opposition to the merits of the suit, while they apparently could find not one in support of it. They make statements like "[t]he two *irate* students are claiming that the faculty statement, *which has never been enforced....*" The use of the term "irate" is obviously meant to give the appearance that Messrs. Weincek and Majchrzak are out of control (the word "concerned" would have done just as well). Clearly, the reference to the nonenforcement of the statement is to make the prohibitions contained therein appear somehow benign. Would the two writers of the article then say that the anti-sodomy laws of a number of states, which make oral sex between consenting adults illegal, are perfectly alright because they have not yet been enforced. I think not.

The article mentions the motion, by the plaintiffs in the suit, to have Judge Curtin excuse himself based on the appearance of impropriety. The writers prominently quote Professor Nils Olsen who states, "that's pretty silly and a real insult to a very fine judge." Aside from the fact that such a motion is not meant to insult a judge, but merely to ensure justice, the writers failed to mention that Judge Curtin was just given an award and honored by this law school last year. Would you want a suit decided by a judge who was just given an award by your opponent? *The Opinion* writers further fail to mention that the motion was granted. Apparently, Judge Curtin agreed more with the plaintiffs than with Professor Olsen. To Judge Curtin's credit, he didn't find the motion "silly" at all.

The article goes on to quote Dean Filvaroff extensively. He is quoted, in response to the comments by William Bennett, as saying, "I would not back away from being called a liberal law school at all. 'Liberal' implies freedom of exchange of ideas which is what education is all about." Very noble! However, no mention is made of the Wall Street Journal's Aside, on the Review and Outlook page, which quoted a Professor of History here at UB as saying he was unaware of a single conservative professor at the law school. The Journal then asked "is that liberal or illiberal?" Someone should also point out to the Dean that it is the freedom of exchange of ideas which the First Amendment is dedicated to protecting. It is this very freedom to exchange ideas which the faculty statement is attempting to limit.

The writers of the article make a point of mentioning that the faculty amended the statement in May 1988, but that the complaint doesn't mention this. Perhaps that is because the amendment is meaningless. What does it mean to say the faculty "does not contemplate [the] imposition of sanctions...." Doesn't anyone wonder why the amendment doesn't simply say that no sanctions will be imposed for pure speech? These are lawyers

*(continued on page 5)*

# Classics Professor Proposes Faculty Statement Revisions

**To the Editor:**

I have been attempting since February '88 to convince the Law Faculty that part 3 of its 2 October '87 resolution is a serious attack on the intellectual and academic freedoms of its students. My own view is that the Law Faculty made this mess and it is therefore up to the Law Faculty to fix it, but nothing whatsoever, to my knowledge, has been done. Please note that by the resolution of 20 May '88 a committee was to be formed to make recommendations for action by the Law Faculty at its first meeting in October 1988. Needless to say, nothing has been done. But, to assist this supposed committee in its deliberations I wrote a memo this Spring which I would like to summarize.

1. I reminded the Law Faculty that we are in the business of educating our students, not hurling "condemnations" at them, and that such activity is abhorrent to our profession and a violation of its duties.

2. *The third part is so vaguely worded as to be worthless, and indeed dangerous.* I point out that by its wording there is nothing which could be said about any of the groups mentioned which could not be interpreted as a violation of its terms.

3. *The offense aimed at in the third part is described in technical jargon and in words not a part of the English language.* I especially point out the objective meaninglessness of the terms "homophobic" and "ageist."

4. *"Swift condemnation" is the language of criminal justice.* No one knows what that means in this context or what kind of "dialectical extension" an enraged Law Faculty member could give to it. Ah, what a brave new world this would be! Imagine speech police roaming at will armed with the power of swift condemnations!

5. *Par. 3 is aimed not merely at the regulation of speech, but at the thought which underlies the speech, which is even worse.* I reminded the Law Faculty that the attempt to excize evil thoughts by forbidding and punishing their expression has always failed. Here the paragraph requires the listener not merely to condemn the act of speech, but more properly *to determine the intent of the thought behind the speech and to punish that.* Ex: Were a student to stand up in class and declare that in his opinion all persons ought to be subject to mandatory retirement at age 55, the immediate issue for the member of the Law Faculty is to determine whether the statement betrays "Ageist" "prejudice and group stereotype" (how?). If the faculty member determines that this is the case, he will subject the speech and the speaker to "swift condemnation;" otherwise he may not.

6. *Which special groups should be included in the par.'s protection and which should not?* What criteria did the Law Faculty employ in coming up with its list? Why were innumerable groups deleted from protection and others included without any explanation? The clear and immediate danger argument doesn't wash because the resolution includes groups about which there were not antecedent claims of "speech victimization." No objective criteria were established for exclusion of groups from protection.

7. *I recommended the excision of that paragraph and the substitution for it of the following:*

> *"We affirm the right of every student to speak freely on any subject, and to hold and express opinions on any matter whatsoever, and we vigorously deny the existence of taboo subjects of speech which may not be discussed freely, openly, completely, from every point of view, by every student, without fear of condemnation or punishment."*

It is the business of the Law Faculty to encourage, not discourage, speech, all speech, not just certain types of approved speech, not just orthodox speech, but all speech. Official ominous and vague decrees have the opposite effect. Did not the US Supreme Ct. recently say:

*(continued on page 7)*

# Law Students Travel To Boston For BLSA Conference

The northeast region of the National Black Law Students Association held its regional meeting on Saturday, September 16, 1989 at Harvard University. Approximately 60 students, representing 18 law schools were in attendance. Representing SUNY Buffalo were BLSA president Valda Ricks, a second year student, BLSA Regional Treasurer Beverly Britton, a second year student, and first year student Andrea Windley.

**by Andrea Windley**

The purpose of the regional meeting is to inform the various BLSA chapters of events taking place within the region as well as to inform them of any problems or changes that have occurred on the national and regional levels. The foremost topic on the agenda at the regional meeting was the BLSA/NALP job fair. The job fair is being held on October 6, 1989 at Fordham School of Law in New York City. More than 225 employers from private firms and public interest associations will be participating in the job fair.

NBLSA plans to begin a monthly newsletter which will include; featured writers, announcements, current events, South African Task Force updates, poetry and BLSA news. SUNY Buffalo will be among the law schools in the region which will contribute to the first edition of the newsletter.

For the second year, NBLSA will be engaged in the Adopt-A-Highschool program. The purpose of the program is to encourage African-Amercian students to pursue a legal education and to increase awareness amongst African-American attorneys, law students and pre-law students of the needs of the black community and their responsibility to address those needs.

In New York City, BLSA chapters have been very politically active. They have formed a political action team which has registerd over 500 voters. They are also working with the *People's Coalition For a Just City Government* to ensure that New York City makes a fair and adequate proposal for its charter revision. BLSA members have done legal research and have prepared a legal memorandum for the coalition.

One of BLSA's upcoming events is *A Leadership Conference And Alumni Reception*. The conference will be held on October 28, 1989 in Hartford, Connecticut. The University of Connecticut School of Law will be the host chapter. The theme of the conference is "The Shape Of Things To Come; Challenges Facing Black Lawyers In The 90's."

There will be a sub-regional meeting on October 14, 1989 at SUNY Buffalo. The next regional meeting will be on November 11, 1989 at Syracuse College Of Law. All BLSA members are encouraged to attend the regional meetings and conferences. The National BLSA Convention is tentatively scheduled to be held in March 1990 in Detroit, Michigan.

# Bronx DA Discusses Internship, Employment Opportunties

Assistant District Attorney, Frank Ianucci, visited the UB Law School, September 15, 1989 to hold interviews and to encourage first, second, and third year students to join the Bronx District Attorney's Office.

**by Maura Malone**

"Do you want to be fascinated and enthralled by your work?" was the question Ianucci repeatedly asked the approximately thirty students attending the brown bag lunch. He emphasized that, in the DA's office, attorneys learn by doing and that they "learn to think on [their] feet and make judgements."

Ianucci's audience could well believe him, as Ianucci worked the room recalling anecdotes from his eleven years in office, telling of the pressures he faces as an assistant district attorney, and putting students on the spot as to what they would do in like circumstances.

Ianucci, who has tried a range of violent crimes and received death threats, admitted that the job has changed his perspective. Noting that before coming to the DA's office, he had been involved in such actions as the march against Kent State and Vietnam Vets against the war, and had considered himself a liberal. Ianucci admitted that he now believes "that 10% of the population is bad" and "there are a whole host of crimes that deserve the death penalty" — statements which brought looks of discomfort to some of his audience.

The Bronx DA's Office hires approximately 50 attorneys each year. The office has a total staff of 351 people. Approximately 1500+ 3rd year students apply for positions; all students requesting interviews will receive one. Starting attorneys are required to give a 4 year commitment and to live in New York City. Ianucci noted that most attorneys stay 4-5 years.

First and second year students may also request a 10 week summer internship. The internship entails rotations to the various bureaus with the DA's Office, to observe and assist assistant DAs for two week periods. The internships are not paid, but the number of internships is basically unlimited.

A primary concern of students was the low starting salary ($28,000 to start, with a raise to $31,000 upon passing the bar). Ianucci admitted that the salary was low, noting that he had "painted living rooms on the weekends for 4 years to pay off student loans," but added that the salary increases to approximately $42,000 after 2 years. Ianucci currently makes approximately $82,000.

The Bronx DA's office is headed by Robert Johnson, who was elected in a much publicized election last year, during which the incumbent, Paul Gentile, was forced to withdraw following allegations by Rudolph Guiliani that Gentile was using federal investigative information for political purpose. Ianucci noted that the office is in a state of flux and that Johnson is overhauling the office.

Further information regarding positions in the Bronx DA's Office is available at the Career Development Office.

## Reporters Lack Objectivity

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ment, the writers do quote Lisa Morowitz of the National Lawyers Guild, who says, "three years later to come in and wage war and not look at the context of the on the faculty. They know how to preclude sanctions if that is what they mean to do. Does the amendment mean that, because no one has, at this time, violated the statement, the faculty, at this time, does not "contemplate" sanctions, but tomorrow might change that. Clearly, the amendment does not preclude sanctions. The amendment signifies nothing and is not worthy of mention.

Why does the article not mention the second part of the amendment which "requests that the committee on committees authorize a student faculty committee to commence work during the summer to produce clarifications to the statement, for action by the faculty at its first meeting in *October 1988*." Has anyone seen or heard any of these proposed clarifications which the amendment seems to admit are needed?

While failing to mention that amendment, the writers do quote Lisa Morowitz of the National Lawyers Guild, who says, "three years later to come in and wage war and not look at the context of the statement is wrong. Of all the injustice that is going on in the world, this lawsuit is a waste of time." First of all, I didn't realize that the more injustice there was in the world, the less justified we are in protecting our constitutional rights. Perhaps Ms. Morowitz believes that if we have a little more injustice in the world we can suspend the right to trial, or the right to life or liberty, or perhaps the consituation itself. That is a typical leftist approach: claim there is too much injustice and use that as an excuse to suspend all human rights. Furthermore, if Ms. Morowitz really looked at the incidents which led to the faculty statement, she would realize that they are all already prohibited by the laws of harassment, assault and vandalism. There is no need to suspend the First Amendment. None of the acts of which she speaks will be protected if these students win their suit. Only freedom of speech (sound familiar?) will be protected. Perhaps, also, Ms. Morowitz can explain to me what difference three years makes. I didn't realize that if you suspend a constitutional right for three years, then you were never again allowed to try to regain it.

The article also quotes Jim Monroe who "doubted whether the plaintiffs 'sincerely mean to uphold the First Amendment' and wonders 'what type of racist and sexist speech they believe should be protected.' " It would seem that Mr. Monroe would grant free speech only to those who would speak of things with which he agrees. If we do not protect *all* speech which is meant to convey an idea, no matter how much we may disagree with that idea, then we have protected nothing. It is speech with which we disagree that we are most likely to try to supress, and it is, therefore, that very speech that we must take care to protect, lest we destroy the right forever. I can only imagine Mr. Monroe, if he had lived during the forming of the constitution, asking, "what kind of treasonous speech are you trying to protect? What kind of blasphemy are you trying to protect? What kind of anarchistic speech are you trying to protect?" And on and on. Perhaps, from now on we can all go to Mr. Monroe and ask him what kind of speech *he* finds acceptable, then we can be assured of never running afoul of the First Amendment according to Monroe. If we do not protect the speech with which we disagree, we have protected nothing!

Finally, Associate Dean Albert, obviously in favor of the faculty statement, expressed his delight at the thought of finally getting to hear from a disinterested judge. I join him in his delight. However, I doubt if, after the verdict is rendered, he will join me in mine.

*Keith L. Woodside*

*Editor's note: The motion to recuse resulted in a transfer of the case to the docket of Judge Arcara. This action took place after publication. The fact that Judge Curtin was given the Jaeckle award was noted in the paragraph above the Olsen quote. The second part of the amendment was printed along with the entire faculty statement on page three.*

## JAG

. . . . . from page 4

Dean Lee Albert, which states in paragraph four, "The ammending process began about two years ago with a Student Bar Association resolution requesting protection of gay and lesbian students."

This is an obvious case of special interest groups applying pressure to institute a policy change to further their own agenda at the expense of others. The faculty was all too willing to rubber-stamp it for them with their special-interest seal of approval. This ammendment therefore *absolutely was not* a case of the faculty merely trying to align its policies with the law.

Which brings me to the point that Executive Orders and SUNY resolutions are *not* law, even though Charny and his comrades seem to think so. They are either ignorant or fantasizing. E.O. 28 and SUNY 83-216 are internal administrative regulations that cannot be applied to outside third parties. A good example of this is illustrated by *Under 21 v. Koch, Mayor of the City of New York,* in which the Court of Appeals of New York, Wachtler, C.J., held that an executive order of the mayor was an unlawful encroachment into the unique public policymaking regime of the legislature when it attempted to regulate the behavior of contracting third parties by prohibiting employment discrimination against homosexuals, a position not yet taken by the duly-empowered legislature.

Now to Charny's baseless defamation of UB President Steven Sample. Charny only shows his complete and utter lack of critical ability and objective judgement in these areas. To say that homophobia (?) was Pres. Sample's reason to come to the conclusion he did is nothing but a low, derisory slur against a competent executive who was only doing his duty, and such an accusation is beneath contempt. Such an infantile reaction is, however, an excellent indication of the shallowness of Charny's mind and his total blindness to any of the other considerations that Pres. Sample may have had to make, given his responsibilities to the rest of the University community and the other 26,000 students that attend UB.

Charny's other lowly assertions such as Pres. Sample does not care about the rights of students or that he has rubber-stamped bigotry and prejudice as hallmarks of university policy should be given all the consideration they are due: none.

As for Charny's moronic charge that Pres. Sample had no legal reasons to strike down one of the law school's pet policies is further proof of the degenerative condition of Charny's faculties. In addition, for Charny to imply that Pres. Sample did not have the authority to do so is as patently ridiculous as saying Pres. Bush does not have the authority to regulate the conduct of the Department of Defense.

As hard as it is for Charny and his ilk to believe, there are students who may want to meet with the military and FBI recruiters without having to leave the confines of the law school or the campus to do so, which is exactly what the law faculty and other individuals intended. Charny asserts that these recruiters were not prevented from recruiting at the law school, but this is just another one of his many lies. One just has to give a brief perusal to the headline of *The Opinion's* issue of 26 April 1989 saying, "FBI Recruiting on Campus Thwarted" to see this outright prevarication.

Pres. Sample was, in his action, making sure that students wishing to meet with these recruiters not be denied the opportunity to do so because of the actions of a few dogmatic individuals, who see the only furtherment of their own cause, regardless of the means used or the costs incurred by others. The law school went far beyond the pale of its own authority by issuing this ammendment, which also contradicted the long-standing University policy of free and open access for all. Pres. Sample had no choice but to round up a runaway law faculty and put it in its place. As much as people like Charny would like to dictate and impose their views on others, they will not be allowed to do so, and Pres. Sample's actions are indicative of this view.

The rest of Charny's comments, such as his Nazi-Aryan eye color euphemisms and his rallying squeak to the flag of the NLG show that Charny operates in an intellectual Bermuda's Triangle; good information goes in, but no good ideas come out. I urge anyone thinking of joining with him to make their own determination on whether his cause, or more importantly, his tactics and methods are right and just, and to look at all sides of an issue after having disseminated all of the relevant information, and not to just take his word for it. If the diatribes of Nathaniel Charny is the result of a UB Law education, we can all watch UB's Law School ratings fall through the floor, as if they have not fallen enough already.

*Drew Miller*

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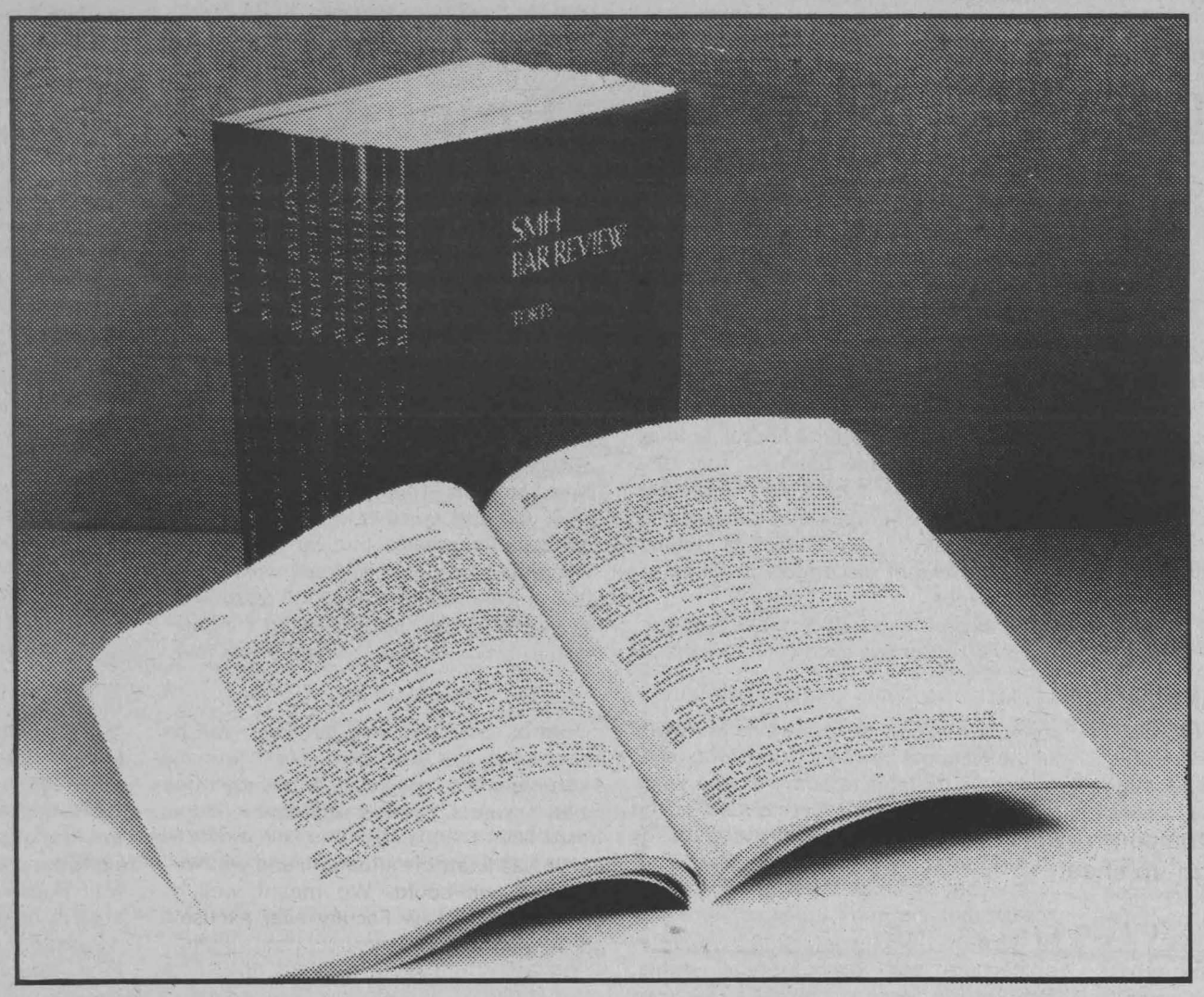


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# NLG Leads Protest Against Rehnquist Decisions

Since the elevation of William Rehnquist to Chief Justice, the Supreme Court has increasingly been the subject of political action aimed at tempering a perceived move by the court's current majority to restrict past decisions on affirmative action and reproductive rights.

**by Bruce Brown**
***News Editor***

The Chief Justice's recent visit to Buffalo prompted members of UB Law's National Lawyers Guild (NLG) to brave the cold and rain to get out the message that they will not stand idly by as the "Rehnquist Court" dismantles hard fought rights.

A group of nearly 75 protestors greeted the Chief Justice with signs, chants and a handbill which declared "so dramatic is the impact of the 1989 decisions that the parallel that comes to mind is the post-civil war reconstruction era. Back then, it took 33 years to get from the promise of the Emancipation Proclamation in 1863 to the bleak reality of "separate but equal" endorsed by *Plessy v. Ferguson* in 1896. This time, it has taken 35 years to get from the glowing promise of *Brown v. Board of Education* in 1954 to the 'Civil Rights Cases' of 1989 that have seemingly enshrined the principle of 'unequal but irrelevant.' "

*Student Protestors Outside of Canisius College*

The protestors were made up of law students representing the NLG and local members of the National Abortion Rights Action League.

Troy Oechsner, a UB Law student and national vice-president of the Guild, stressed that this was not just a spontaneous response to a local event. Rather, he went on, UB Law, Berkeley and Michigan are among 26 law schools at which ongoing movements geared toward demographic diversity and the preservation of civil rights will be found.

While this action was calculated to raise awareness about the vulnerability of affirmative action and reproductive rights at the Federal level, future actions will focus on the "need for UB Law to strongly assert it's support for affirmative action by diversifying its faculty and student body." Oechsner emphasized that "from a national perspective UB is better than most, but the NLG would like to see the school hire an openly gay professor." Additional gaps in the faculty, he noted, are the need for Asian and Hispanic professors as well as the NLG's desire to see the administration set an overall goal of 50% women on the faculty.

Another NLG spokesperson stated that the goal of diversity within the school is a necessary element of the public interest perspective emphasized here at UB. "No institution can adequately respond to the needs of the public without reflecting the diverse makeup of society."

*Due to unforeseen space limitations, part 2 of Isabel Marcus' essay on her experience in China will be printed in the next issue.*

## Law School Committee Deadline Extended

The Student Bar Association is extending the deadline for the law school committee sign-ups. The new deadline for committee sign-ups and letters of intent is **Friday, September 29, at 5:00 P.M.**

Committee candidates will be assigned an interview time which will be posted Monday, October 2 on the SBA door. Interviews will be conducted Tuesday and Wednesday, October 3 and 4, from 5:00 P.M. to 10:00 p.m.

A description of each of the committees and their functions will be posted along with the sign-up sheet.

***Be sure to sign up NOW!!!***

## Faculty Statement

*from page 4*

"If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

In short, par. 3 is a farrago of inadequate thoughts badly expressed, and as an act of communication of the Law Faculty, is a disgrace. The only consistent and plausible excuse for the paragraph I have heard from members of the Law School is: "It was a terrible situation, and we did the best we could. We meant well." Would you as Law Faculty ever excuse an inadequately conceived and badly written student brief on the excuse that the student "meant well"?

I must assume that if the Law Faculty continues to refuse to examine this paragraph, it is simply making a collective assertion that in the defense of orthodoxy it has the right to utter tripe, dangerous tripe. It does have that right. But I hope I may be allowed to hope, even though I have been described as a fanatical ideologue and worse by members of the Law Faculty, that reason will eventually triumph.

*Sincerely,*
*Thomas C. Barry*
*Classics*

# Modesty prevents us from telling you how good BAR/BRI Is.

# Therefore... we've let BAR/BRI students do the talking.

I was as prepared as I could have been. The exam itself had no surprises. It was a living nightmare, but BAR/BRI prepared me. If I have to do this again, I will take BAR/BRI again.

**- Albany Law School**

Your course was worth the money. I couldn't imagine being more prepared. If I didn't pass the fault in no way can be attributable to any misguidance on your part. I also was very comforted by the feeling you all conveyed that you're concerned and cared. It showed that customer satisfaction is important to you and I am a satisfied customer! Thank you!!

**- Albany Law School**

I am very happy with the BAR/BRI program. I feel that you provide an excellent program and I would highly recommend it to others. If I do not pass the bar, it will not be because of a lack of effort on behalf of the BAR/BRI personnel. Thank you for all your help.

**- Brooklyn Law School**

All in all, I was very satisfied with BAR/BRI....After hearing what Pieper does to his students' poor hands, I'm truly glad I chose BAR/BRI. Variety is very good in the course of a summer.

**- Brooklyn Law School**

I was generally satisfied with the lectures and very glad for all the written materials you gave us (the outlines and practice questions). In addition, I appreciated your obvious support and encouragement for us during this very stressful period.

**- Brooklyn Law School**

Thank you for Essay #6 on the Bar. I was tired but when I saw the question, what an adrenal surge. I did well in the bar but having done Essay #6 already and knowing the model answer was a gift. Thank you.

**- Brooklyn Law School**

BAR/BRI was excellent. It prepared me for the bar. Hopefully, I no longer need your services, but I would do BAR/BRI again. I learned the law, not just memorized mnemonics and for that I am grateful.

**- Brooklyn Law School**

The most effective thing about the BAR/BRI course was the frame work. It's pretty rigid...You know what you should be doing at all time....I seem more happy with BAR/BRI than other people seem in other courses.

**- Brooklyn Law School**

I was very impressed with BAR/BRI. The methods, techniques and materials were all very helpful. Most of all, I appreciated the way BAR/BRI made itself available to each member individually; to give your personal home phone numbers to thousands of people was both "daring" and commendable. No matter what the results of my exam will be, I know I will recommend BAR/BRI to others. God Bless!

**- Buffalo Law School**

I would recommend the course to others and don't regret my choice.

**- Buffalo Law School**

BAR/BRI was great as far as giving me emotional support and confidence in what I did know; (not shaking my confidence because of what I didn't know, like other bar candidates)....In addition, the good luck letter made me feel good. Thanks.

**- Cardozo Law School**

I didn't find out what I liked about the course until last night when I was talking to one of my friends who was taking Pieper and even though he had all mnemonics down...I just found that he didn't have the grip on the substantive law that I thought I did....I think the lectures really lay everything out for you. They give you enough of an overview that is required to really be able to handle the essays. I would definitely recommend the BAR/BRI course to a friend.

**- Cardozo Law School**

BAR/BRI gave me structure that I needed for the bar. Looking back, I think I would be in a tough situation if I had to approach this on my own. I had a lot of friends who have been taking other courses and I've sort of compared what they're learning and what I'm learning and I think that BAR/BRI is doing a really good job....The BAR/BRI personnel is very helpful. I've called Steve Rubin several times on the phone. He has always been available to answer questions. He literally called me at 12 o'clock at night...Also, the office people have been really helpful too....I would definitely recommend BAR/BRI to anyone.

**- Columbia Law School**

The lecturers were really terrific, I expected that sitting in front of a TV 3 hours a day would be unbearable, but for the most part they made it almost an enjoyable experience.

**- Cornell Law School**

I am completing this evaluation after the bar exam. I feel that BAR/BRI prepared me extremely well for the exam, and I would certainly recommend your course.

**- Cornell Law School**

I am very impressed with the whole operation - since you really have a captive audience, I expected a lesser level of professionalism and caring. I have friends in other courses, some of whom are subjected to scare tactics and panic lectures. I appreciate the lack of the same at BAR/BRI.

**- Fordham Law School**

I was very pleased with what I was taught. The way it was presented and the respect BAR/BRI shows its students. A professional, warm and top notch job! Thank you!

**- Fordham Law School**

The materials are very good. The most important thing about the course is that they give you what's important and what isn't. So you can know what is likely to be on the test....The BAR/BRI people were very helpful. They are very, very nice and very cooperative. I'm very pleased.

**- Fordham Law School**

This is written 7/31. I felt well prepared for the questions on the exam. Where I was unsure I had no problem making something up....No doubt you heard the last essay was almost identical to a practice question. Good show!

**- Georgetown Law School**

It's a joy to finally learn all the law I only heard about in law school.

**- Harvard Law School**

I like the fact that they have been very realistic about what they are trying to accomplish - to get us to pass. I like the fact that they really try. Despite the fact that there is really a large number of people in the course, I have actually gotten a lot of feedback on the essays...I think that my chances on passing are a lot better with this course...I took BAR/BRI under recommendation and I would certainly recommend it to others.

**- Harvard Law School**

I am writing this evaluation after sitting for the New York State and Multistate exams (and before NJ). I would sincerely like to tell you that you all did a terrific job and deserve much praise. Thank you!

**- Hofstra Law School**

I thought BAR/BRI was outstanding in every way and I will recommend it to all who ask. Thanks to Stan, Steve, Erica and the BAR/BRI staff. You can be proud of your organization.

**- New York Law School**

Overall the course was very good. BAR/BRI helped make a miserable experience a lot more bearable. I'm glad I took the course.

**- NYU Law School**

What I like about the course is that it is really straight forward....In addition to learning the law, you learn how to answer the questions on the exam and how to write a good essay and that's what really counts....I found the BAR/BRI personnel very helpful. I call the office all the time with questions and they have always gotten back to me or answered the question immediately....I would highly recommend BAR/BRI for anyone studying for the New York Bar.

**- NYU Law School**

I thought the lectures were the best. They're very thorough. They give you all the information you need to know. That's what I like best about BAR/BRI.

**- NYU Law School**

I would definitely recommend the course to friends. I think it's a good way to prepare for the bar. It does not put that much pressure on you. I followed the schedule. I found that during the course the schedule was not that difficult to keep up with. It still gave me a lot of free time up until the last day of class. Preparation has not been that painful at all.

**- NYU Law School**

The program is well-organized and set-up to "spoon-feed" the material to the audience. After 3 years of law school, we're all tired and this is just what is needed. I also appreciated all the "pep talks" and encouragement given throughout the lectures. I would highly recommend your course.

**- Pace Law School**

Overall - very satisfied with BAR/BRI - would recommend it to students in the future. Great job! Thanks!

**- Pace Law School**

For the most part I liked how they broke everything down into easy to remember bits and pieces. It's not really as confusing as it was in law school....I would highly recommend the course to my friends and I have friends taking the other courses and from what I see them doing, I think this is much better.

**- Pace Law School**

BAR/BRI was the best preparation for the bar exam. The staff cared about the students. BAR/BRI eased the anxiety of the bar exam.

**- St. John's Law School**

BAR/BRI is to be praised. No gimmicks - they were not gurus. Merely stress hard work without falling off the deep end. I would, and will give my stamp of approval to friends, law students and anyone else who will listen. Thank you for running a first class operation.

**- St. John's Law School**

I was very satisfied with the BAR/BRI course. The lecturers were all good and interesting. I took no additional courses and I feel confident that the main course gave me adequate preparation.

**- St. John's Law School**

I think BAR/BRI is a good course. It gives students everything they have to know...I found BAR/BRI people to be very responsive. I found that whenever I needed help, they were there to help me out....If I missed the course, I could always go to the tape lecture. I could go to the office and just listen to the tapes. I found that to be very good....I would definitely recommend BAR/BRI because it covers everything you have to know.

**- St. John's Law School**

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BAR REVIEW